

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

| | | |
|-----------------------------|---|----------------------------------|
| CHRISTOPHER LUKE RADFORD, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CIVIL ACTION NO. 3:18-CV-003-SRW |
| |) | (WO) |
| |) | |
| ZACHARY HARRELSON – ALABAMA |) | |
| STATE TROOPER, |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM OPINION and ORDER

I. INTRODUCTION

This 42 U.S.C. § 1983 action is pending before the court on a complaint filed by Christopher Luke Radford, a pre-trial detainee at the time he filed the complaint. In the instant case, Radford challenges the constitutionality of actions taken against him by the defendant during the investigation of a June 13, 2017 car accident that involved the death of an occupant of the vehicle. On August 7, 2018, Radford filed a motion to dismiss this case. Doc. 19. On August 15, 2018, the defendant filed a stipulation of dismissal stating that “the defendant will stipulate and agree to dismissal of the above-styled action.” Doc. 20.¹

¹Although the defendant asserts that his stipulation of dismissal is filed pursuant to Rule 41, F.R.Civ.P. 41(a)(1)(A)(ii), this rule only permits voluntary dismissal by the plaintiff. Moreover, dismissal by stipulation is not appropriate unless the stipulation is “signed by all parties who have appeared.” *Id.* The stipulation of dismissal is not signed by the plaintiff.

Upon consideration of the plaintiff's motion to dismiss and the defendant's stipulation of dismissal, the court finds that the plaintiff's motion to dismiss is due to be granted and this case dismissed without prejudice.

II. DISCUSSION

Dismissal without prejudice at the insistence of the plaintiff is committed to the sound discretion of this court, *see* Rule 41(a)(2), F.R.Civ.P., and absent some plain legal prejudice to the defendants, denial of the dismissal constitutes an abuse of this court's discretion. *McCants v. Ford Motor Company, Inc.*, 781 F.2d 855 (11th Cir. 1986). Litigation costs, inconvenience to the defendant, or the prospect of a second or subsequent lawsuit do not constitute clear legal prejudice. *Id.*; *see also Durham v. Florida East Coast Railway Company*, 385 F.2d 366 (5th Cir. 1967). After review of the pleadings filed by the parties, the court concludes that this case is due to be dismissed without prejudice on the motion of the plaintiff.

III. CONCLUSION

Accordingly, it is ORDERED that:

1. The plaintiff's motion to dismiss is GRANTED.
2. This case is DISMISSED without prejudice.
3. Costs are taxed against the plaintiff.

A separate Final Judgment will be entered in accordance with this Memorandum Opinion and Order.

Done, on this the 3rd day of October, 2018.

/s/ Susan Russ Walker
Susan Russ Walker
United States Magistrate Judge